THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO.1439 OF 2003

DATED.23.08.2005

Between:

G.Korlayya, S/o. Marayya, aged about 26 years,

R/o. Visakhapatnam.

……PETITIONER

AND

The Dock Labour Board, rep. by its

Chairman, Visakhapatnam. And another.

……RESPONDENTS

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 1439 of 2003

ORDER

This Writ Petition is filed by the petitioner seeking to issue a Writ of Mandamus declaring the proceedings of the first respondent, dated 10.6.2002 as confirmed by the proceedings of the second respondent, dated 13.11.2002 dismissing the petitioner from service, as illegal and arbitrary, and for consequential direction to reinstate the petitioner with all benefits including back wages.

The case of the petitioner is that he was appointed as Games boy on a salary of Rs.750/- per month with effect from 31.1.1994 and since then he has been working with the respondent-Board. While so, from 8.5.2000 he was not allowed to duty and a charge sheet was also issued to him, dated 26.7.2000 stating that he purchased the stolen property of Visakhapatnam Dock Labour Board Kalyana Mandapam from two persons in respect of which, a criminal case is pending in Crime No.5 of 2000 with V Town Police Station, Visakhapatnam. The petitioner submitted his explanation on 3.8.2000 stating that he was only a witness on behalf of the prosecution in Crime NO.5 of 2000 and he is not connected with the stolen property of the Dock Labour Board. Without passing any suspension orders, since the petitioner has been stopped from attending the duty, he filed W.P.No.6969 of 2001 and this Court granted interim orders directing the respondents to continue the petitioner in service. By virtue of the said orders, the petitioner was reinstated into service on 9.10.2001 and the enquiry was commenced. Later, since the stay orders were vacated by this Court, the petitioner was discontinued in service. Aggrieved by the same, the petitioner filed W.A.No.775 of 2001 and this Court by order, dated 6.4.2002 disposed of W.P.No.6969 of 2001 and W.A.No.775 of 2001 with a direction to the first respondent to conduct the enquiry proceedings expeditiously after taking into account the explanation submitted by the petitioner. It is stated that C.C.No.213

of 2000, which is initiated against the persons said to have stolen the furniture belonging to the first respondent, has ended in acquittal on 13.12.2001. Thereafter, the enquiry officer conducted enquiry, found the petitioner guilty of the charges, and submitted his report on 9.5.2002. Pursuant to the said report, the petitioner was served with a show cause notice, dated 15.5.2002, to which the petitioner submitted his explanation stating inter alia that the criminal case is ended in acquittal. The first respondent, by order, dated 10.6.2002 dismissed the petitioner from service and the appeal preferred by the petitioner was also rejected by the second respondent, by proceedings dated 13.11.2002. Hence, this Writ Petition.

The respondents filed a counter affidavit disputing and denying the allegations made by the petitioner. It is stated that on the basis of the evidence recorded in the domestic enquiry, the petitioner was found guilty of the charges and hence, he was dismissed from service. It is further stated that the scope of enquiry before the Criminal Court and the domestic enquiry are entirely different.

Heard both sides and considered the material available on record.

The learned counsel for the petitioner contended that there is no evidence in the domestic enquiry so as to conclude that the petitioner committed misconduct and therefore, the findings of the enquiry officer are perverse and are liable to be set aside.

On the other hand, the learned counsel appearing on behalf of the respondents contended that the evidence adduced by the department in the enquiry would indicate that the petitioner with full knowledge purchased the stolen articles belonging to the Visakhapatnam Dock Labour Board Kalyana Mandapam, in which the petitioner was working as a Watchman at the relevant point of time and therefore, he pleas to dismiss the writ petition.

There cannot be any dispute that a proper decision has to be taken by the disciplinary authority and on appeal, by the appellate authority. Unless the findings are not based upon any evidence or the findings are perverse, normally, this Court will not interfere with the administrators' decisions. The charge levelled against the petitioner is that he alleged to have purchased four P.V.C. chairs and three ceiling fans from V. Jayanthi Rao and Ch.Mutyalaiah, who are accused in Crime NO.5 of 2000. Two witnesses were examined in the enquiry; one is the Inspector of Works; and another is the contractor. They stated they have learnt that the petitioner

purchased the property from V. Jayanthi Rao and Ch.Mutyalaiah. Even though strict rules of Evidence Act has no application in the departmental enquiry, but at the same time general principles of Evidence Act would apply.

As rightly contended by the learned counsel for the petitioner the statements given by the two witnesses referred to above, are based upon hearsay evidence. The persons, from whom these witnesses came to know about the purchase of property, have not been examined in the departmental enquiry. Even the delinquent petitioner admitted about the purchase of the articles in question. If the petitioner is an innocent purchaser, then it would not amount to misconduct. If the petitioner purchased the property having knowledge that it is stolen property, then certainly it would amount to misconduct. None of the witnesses stated that the petitioner knowingly or reason to believe that these articles have been stolen from the Kalyanamandapam has purchased the same. Therefore, at best, it can be said to be an innocent purchase made by the petitioner. Perhaps, that is the reason why, the police also did not show the petitioner as an accused as receiver of stolen property. On the other hand, the petitioner was cited as a witness (P.W.4) in the criminal case initiated against V. Jayanthi Rao and Ch.Mutyalaiah under Section 380 of Indian Penal Code. Except the evidence of two witnesses in the departmental enquiry, there is no other material to show that the petitioner knowingly or reason to believe that the property is the stolen property, purchased the same so as to arrive at a conclusion that he is guilty. Therefore, since the findings are perverse, the impugned proceedings are quashed.

Accordingly, the Writ Petition is allowed. No costs.

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K.C.BHANU, J

23rd AUGUST, 2005

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